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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/316,725	05/21/1999	MICHAEL MUNOZ	P-5502	8221

7590

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WILLIAM T RIFKIN
RUDNICK & WOLFE
P O BOX 64807
CHICAGO, IL 606640807

EXAMINER

DIXON, THOMAS A

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 04/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PRG

Office Action Summary

Application No.

09/316,725

Applicant(s)

MUNOZ ET AL. PR 4

Examiner

Thomas A. Dixon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-25 and 28 is/are rejected.
- 7) ☒ Claim(s) 3, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Information Disclosure Statement

1. The IDS, paper #5, filed 11 February 2002 has been considered.

Specification

2. The new title is acceptable.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is seen to be a hybrid method/apparatus claim which is improper. See Ex parte Lyell, 17 USPQ2d 1548 (Bd. Pat. App. & Inter. 1990) 2173.05(o)

4. The rejections of Claims 5, 8, 9, 10, 13, 17 under 35 U.S.C. 112 are withdrawn in view of applicant's amendments.

Claim Rejections - 35 USC § 101

5. The rejections of Claims 1-11, 16, 19-20 under 35 U.S.C. 101 are withdrawn in view of applicant's amendments and consultation with SPRE.

Response to Amendment and Arguments

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Applicant's amendment of claim 1 is not seen to be substantive and the rejection is maintained.

8. Applicant's arguments have been considered but are not convincing. Examiner disagrees with applicant's argument that Levander ('108) does not disclose an operator independent method of task time measurement. The cost databases, figure 5 (212, 216), are used to determine the costs of the line items using historical data or industry standards, these data, which applicant admits are old and well know, are seen to be independent of the actual worker because the time and motion studies which were performed to create these databases are not dependent on any one operator, i.e. operator independent.

Applicant is arguing limitations which do not appear in the claims. The claims refers to tasks, not movements, LeVander discloses line items for each item of work,

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contractors, auto mechanics, and surgeons, for example, are known to charge for each task, such as installing a countertop, replacing a water pump or performing elective surgery, and are known to give estimates of the time and amount of money involved with each task, which as applicant states treats the human like a machine, therefore, LeVander is seen to meet the language of the claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

9. Claims 1, 4, 6, 7, 8, 11-13, 16, 21-24, 28 are rejected under 35 U.S.C. 102(e) as being anticipated by LeVander (6,216,108).

As per Claim 1.

LeVander ('108) discloses:

- a) establishing a list of tasks involved in said work process wherein at least one of the said tasks involves execution by a human operator, see figure 5 (206);
- b) calculating the expected duration of said tasks by said human operator using an operator independent method of task time measurement, see (210, 212);
- c) establishing a first cost component of each task as a function of the expected time of execution of said task and a cost per unit of time for said human operator, see (218);
- d) establishing a second cost component of each task dependent on non-labor costs of the process, a portion of each non-labor cost being apportioned to said task as a function of the time of execution of said task by said human operator, machine operating time or other relative consumption of a resource, see (210, 216);
- e) summing the first and second components for the task to establish a task cost independent of the efficiency of the human operator, see (214, 218).

As per Claim 4.

LeVander ('108) discloses all the limitations of Claim 1.

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LeVander ('108) further discloses the activities of a service business, see figure 2 (10).

As per Claim 6.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses the activities are performed by two or more different human operators, see figure 2 (54).

As per Claim 7.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses:

f) summing the costs of the tasks in said process to give a process cost, and utilizing the process cost to determine the cost of the work process, see figure 5 (224).

As per Claim 8.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) further discloses the costs in the work process are associated with a business unit, see column 7, lines 19-28.

As per Claim 11.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) further discloses said work process is a proposed work process, and the process cost is used to determine the economic outcome of a business decision before it is implemented, see column 9, line 38 – column 10, line 38.

As per Claim 12.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) further discloses a financial model of revenue costs and profit, see column 7, lines 42-56.

As per Claim 13.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) further discloses a at least ROI is determined for a capital investment, see column 7, lines 42-56

As per Claim 16.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses the utilization ratios are used for the purpose of reallocating work from over-utilized operators to under-utilized operators, see column 8, lines 57-62.

As per Claim 21.

LeVander ('108) discloses all the limitations of Claim 7

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LeVander ('108) further discloses revenue generated by said process is calculated and profitability of said work process is calculated based on the difference between the cost of the process and the revenue, see column 7, lines 16-67.

As per Claim 22.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses the difference between the calculated time to complete a task independent of the operator and the actual time taken by the operator is used to establish a risk profile for the business, see column 11, lines 6-31.

As per Claim 23.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses a difference between the calculated time to complete a task independent of the operator and the actual time take by the operator is used to establish hidden liability of unperformed work, see column 11, lines 6-31.

As per Claim 24.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) further discloses:

a memory means, see figure 3 (62);

a processor means, see figure 3 (10)

the expected time to complete said activities and the cost per unit time of said operator being maintained in said memory means and the cost of the activity being calculated using said processor, see column 9, lines 1-25.

As per Claim 28.

LeVander ('108) discloses:

calculating the expected duration of said tasks by said human operator using an operator independent method of task time measurement, see (210, 212);

establishing a first cost component of each task as a function of the expected time of execution of said task and a cost per unit of time for said human operator, see (218);

establishing a second cost component of each task dependent on non-labor costs of the process, a portion of each non-labor cost being apportioned to said task as a function of the time of execution of said task by said human operator, machine operating time or other relative consumption of a resource, see (210, 216);

summing the first and second components for the task to establish a task cost independent of the efficiency of the human operator, see (214, 218); and

summing the costs of the tasks to obtain a total cost utilized to determine the cost of the work process, see column 10, lines 25-33.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 2, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVander (6,216,108) in view of Isherwood (5,918,219).

As per Claim 2.

LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) does not disclose operator independent method of task time measurement is a predetermined motion time system.

Isherwood ('219) teaches the independent task time measurement is a predetermined motion time system, see figure 5 (503) for the benefit of accurate job cost estimating.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the predetermined motion time system of Isherwood ('219) in combination with the invention of LeVander ('108) for the benefit of accurate job cost estimating.

As per Claim 14.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) does not disclose a business goal is set and changes in process cost and time are calculated.

Isherwood ('219) teaches the setting of goals and calculating changes in cost and time, see figure 3 (311, 312 and 316)

11. Claims 5, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVander (6,216,108) in view of Conway (5,732,401).

As per Claim 5.

LeVander ('108) discloses all the limitations of Claim 4.

LeVander ('108) does not disclose the service business is a healthcare provider.

Conway ('401) teaches a healthcare provider using activity based costing for the benefit of accurately pricing healthcare services, see column 1, line 66 – column 2, lines 19.

As per Claim 25.

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LeVander ('108) discloses all the limitations of Claim 1.

LeVander ('108) does not further disclose the task cost is utilized with other task costs for activity based costing.

Conway ('401) teaches task costs utilized activity based costing, see column 2, lines 24-32 for the benefit of accurately pricing services.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the combined task costs of LeVander ('108) as taught by Conway ('401) for the benefit of accurately pricing services.

12. Claims 15, 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVander (6,216,108) in view of Dangat et al (5,971,585).

As per Claim 15.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) does not limit the running of the process to one time and could be used for the entire business but does not specifically disclose the method is utilized to establish the cost of all work processes in a business.

Dangat et al ('575) teaches management of the total business in multiple tiers from the whole business down to individual operator assignments, see column 1, line 47 – column 3, line 15 for the benefit of effective decision making.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to utilize the process of LeVander ('108) throughout the whole business as taught by Dangat et al ('575) for the benefit of effective decision making.

As per Claim 17.

LeVander ('108) discloses all the limitations of Claim 16.

LeVander ('108) does not disclose reallocating work from over-utilized operators to under-utilized operators.

Dangat et al ('575) teaches work allocation, see column 2, lines 35-49 for the benefit of effective decision making.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to reallocate personnel or machines as taught by Dangat et al ('575) in the invention of LeVander ('108) for the benefit of effective decision making.

As per Claim 18.

LeVander ('108) discloses all the limitations of Claim 17.

LeVander ('108) does not disclose utilization ratios are used for the purpose of bring operators close to a 100% utilization ratio.

Dangat et al ('575) teaches optimization of work allocation, see column 2, lines 8-21 for the benefit of effective decision making.

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Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to optimize the reallocation personnel or machines as taught by Dangat et al ('575) in the invention of LeVander ('108) for the benefit of effective decision making.

As per Claim 19.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) does not disclose operation costs comprise department costs.

Dangat et al ('575) teaches long range planning which include multiple facilities, which are seen to be departments, see column 4, lines 60-67 for the benefit of effective decision making.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include departmental costs in the operating costs of the business as taught by Dangat et al ('575) in the invention of LeVander ('108) for the benefit of effective decision making.

As per Claim 20.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) does not disclose operation cost comprise total business operating costs.

Dangat et al ('575) teaches long range planning which include cost/pricing, see column 2, lines 47-65 for the benefit of effective decision making.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include total operating cost of the business as taught by Dangat et al ('575) in the invention of LeVander ('108) for the benefit of effective decision making.

13. Claims 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over LeVander (6,216,108) in view of Nick (6,009,406).

As per Claim 9.

LeVander ('108) discloses all the limitations of Claim 7.

LeVander ('108) does not disclose the costs of the work process comprise business line costs of a business line.

Nick ('406) discloses a including costs of a product line and custom engineered product line, see column 2, lines 6-63 for the benefit of maintaining profitability in a competitive market.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include the costs of a product line in the costs of the work process, as taught by Nick ('406) for the benefit of maintaining profitability in a competitive market.

As per Claim 10.

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LeVander ('108) discloses all the limitations of Claim 9.

LeVander ('108) does not disclose the business line costs and revenue are used to calculate the profitability of the business line.

Nick ('406) discloses a including costs of a product line and custom engineered product line, see column 2, lines 6-63 for the benefit of maintaining profitability in a competitive market.

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to include the costs of a product line in the costs of the work process, as taught by Nick ('406) for the benefit of maintaining profitability in a competitive market.

Allowable Subject Matter

14. Claims 3, 26, 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Dixon whose telephone number is (703) 305-4645. The examiner can normally be reached on Monday - Thursday 6:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7293 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

A handwritten signature in black ink, appearing to read "Thomas A. Dixon", with a stylized flourish at the end.

Thomas A. Dixon
Examiner
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April 17, 2002